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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

KRYSTI NICOLE DUNN,

Defendant and Appellant.

A141665

(Del Norte County
Super. Ct. No. CRF14-9080)

Defendant Krysti Nicole Dunn appeals from a judgment entered on her plea. Her counsel asked this court for an independent review of the record to determine whether there are any arguable issues. (*People v. Wende* (1979) 25 Cal.3d 436.) We requested briefing on whether the fines imposed under Health and Safety Code¹ sections 11372.5 and 11372.7 were authorized. We conclude that those fines were unauthorized, as the Attorney General concedes, and we order \$246 in fines to be stricken.

I.
FACTUAL AND PROCEDURAL
BACKGROUND

Dunn was charged with felony counts of possession of a controlled substance in jail (Pen. Code, § 4573.6) and possession of a controlled substance (§ 11377) after she was found in possession of methamphetamine while incarcerated in Del Norte County Jail. Under a plea agreement, Dunn pleaded guilty to the first count and stipulated to a

¹ All further statutory references are to the Health and Safety Code unless otherwise noted.

mitigated term of two years, to be served consecutively to the sentence she was already serving. The second count was dismissed.

The trial court sentenced her in accordance with the plea agreement and ordered her to pay various fines and fees totaling \$1,436. This amount included a \$50 fine under section 11372.5 and a \$10 fine under section 11372.7. Those fines were added to a \$200 “Statutory Fine”² for a base fine of \$260, from which several hundred dollars in additional fines were derived.³ Dunn did not object to any of the fines imposed.

II. DISCUSSION

“[A] sentence is generally ‘unauthorized’ where it could not lawfully be imposed under any circumstance in the particular case.” (*People v. Scott* (1994) 9 Cal.4th 331, 354.) Errors resulting in an unauthorized sentence, which “are correctable without referring to factual findings in the record or remanding for further findings[,] are not waivable,” and we may address them even if the defendant does not object below. (*People v. Smith* (2001) 24 Cal.4th 849, 852; *Scott*, at p. 354.) The remedy for an unauthorized fine is to strike it. (See *People v. Thomas* (1996) 42 Cal.App.4th 798, 804-805.)

² It appears this fine was imposed under Penal Code section 672, which permits a trial court to impose a fine of up to \$10,000 on any person convicted of a felony “in relation to which no fine herein is prescribed.” Since we conclude that the fines under sections 11372.5 and 11372.7 were unauthorized and must be stricken, this fine was proper. (Cf. *People v. Breazell* (2002) 104 Cal.App.4th 298, 300, 304 [error to impose fine under Penal Code section 672 when also imposing fine under section 11372 for violation of enumerated statute].)

³ Various statutes provide for fines that are calculated as a percentage of the base fine. Dunn was assessed \$260 under Penal Code section 1464 (100 percent of base fine); \$182 under Government Code section 76000 (70 percent of base fine); \$130 under Government Code sections 70372, subdivision (a) and 70375, subdivision (b) (50 percent of base fine); \$52 under Government Code section 7000.5 (20 percent of base fine); \$130 under Government Code sections 76104.6 and 76104.7 (50 percent of base fine); and \$52 under Penal Code section 1465.7 (20 percent of base fine).

Here, the fines imposed under sections 11372.5 and 11372.7 were unauthorized because the statute under which Dunn was convicted is not among those enumerated in either provision. (See *People v. Thomas, supra*, 42 Cal.App.4th at pp. 800, 803-804 [imposition of fine under section 11350, subdivision (c) for nonenumerated offense was unauthorized].) Under section 11372.5, every defendant “convicted of a violation of” certain enumerated statutes “shall pay a criminal laboratory analysis fee in the amount of fifty dollars (\$50) for each separate offense.” (§ 11372.5, subd. (a).) Penal Code section 4573.6, the only statute under which Dunn was convicted, is not among the statutes listed. (§ 11372.5, subd. (a).) Section 11372.7 provides, with an exception not relevant here, that every defendant “convicted of a violation of this chapter shall pay a drug program fee in an amount not to exceed one hundred fifty dollars (\$150) for each separate offense.” (§ 11372.7, subds. (a), (b).) “[T]his chapter” refers to Chapter 6 of the Uniform Controlled Substances Act in the Health and Safety Code, which does not include the statute under which Dunn was convicted. As a result, the fines under sections 11372.5 and 11372.7 and the additional fines derived from them were unauthorized and must be stricken.

III. DISPOSITION

The \$50 fine under section 11372.5 and the \$10 fine under section 11372.7 are ordered stricken. In addition, the following fines are ordered reduced as follows: the fine under Penal Code section 1464, to \$200; the fine under Government Code section 76000, to \$140; the fine under Government Code sections 70372, subdivision (a) and 70375, subdivision (b), to \$100; the fine under Government Code section 7000.5, to \$40; the fine under Government Code sections 76104.6 and 76104.7, to \$100; and the surcharge under Penal Code section 1465.7, to \$40. The judgment is otherwise affirmed.

Humes, P.J.

We concur:

Margulies, J.

Dondero, J.